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March 15, 2010

Donna Napolitano, Esq.
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One West Street
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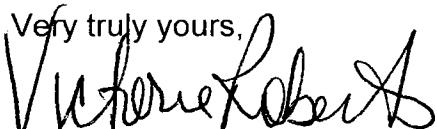
Re: Darryl T. Coggins v County of Nassau, et al.
Docket No.: 07-CV-3624(JFB)(AKT)

Dear Ms. Napolitano:

Enclosed please find the original and one copy of the testimony of Alexander J. Barnych, taken at an examination before trial on February 25, 2010 in the above-referenced matter.

Please have the witness execute the original and return to us as soon as possible. Please note that any necessary changes are to be made on a separate sheet of paper and notarized, with the reason for the change or correction set forth. The copy is for your files.

Please note that if the original is not signed and returned to us within thirty days of the date hereof, we shall utilize the same at trial as if signed and sworn to.

Very truly yours,

VICTORIA ROBERTS
Legal Assistant

Enclosures

:vr

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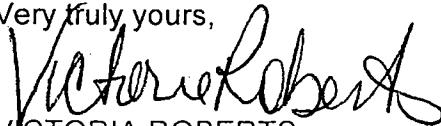
Dear Ms. Napolitano:

During the depositions of Defendants Alexander J. Barnych and Nicholas Occhino, request for documents were made. To-date, we have no record of receiving the requested documents. Please allow this to serve as a formal written demand for documents. Requests were made as follows:

- **Defendant Alexander J. Barnych deposed February 25, 2010:**
Page 79: complete records of Internal Affairs Unit;
Page 91: document relating to vouchering of gun and magazine by Nassau County of Floral Park Police Departments;
Page 94: any photographs of gun, car or anything else taken at the time of the event; and
Page 99: case file.
- **Defendant Nicholas Occino deposed February 25, 2010:**
Page 85: entire file of Internal Affairs Unit.

As quite some time has passed since these requests were made, it would be greatly appreciated if this matter were given your immediate attention.

Thank you for your cooperation. We look forward to hearing from you in the near future.

Very truly yours,

VICTORIA ROBERTS
Legal Assistant

Enclosures
:vr

COPY

1

2 UNITED STATES DISTRICT COURT
3 EASTERN DISTRICT OF NEW YORK

3 DARRYL T. COGGINS,

4 Plaintiff,

5 - against -

6 COUNTY OF NASSAU, NASSAU COUNTY POLICE
7 DEPARTMENT, POLICE OFFICER JAMES VARA,
8 in his individual and official capacity,
9 and POLICE OFFICER CRAIG BUONORA, in his
individual and official capacity, and
JOHN DOES "1-10," in their individual
and official capacity,

10 Defendants.

11 Docket No. 07-CV-3624

12 50 Clinton Street
13 Hempstead, New York

14 February 25, 2010
15 1:53 p.m.

16
17 Deposition of the Defendant, NASSAU
18 COUNTY POLICE DEPARTMENT by ALEXANDER J.
19 BARNYCH, pursuant to Notice, before Jennifer
20 Fuchs, a Notary Public of the State of New
21 York.

22
23
24 REALTIME REPORTING, INC.
124 East Main Street, Suite 202
Babylon, New York 11702
25 516-938-4000

1

2 APP E A R A N C E S:

3

LAW OFFICES OF FREDERICK K. BREWINGTON

4

Attorney for Plaintiff

5

50 Clinton Street, Suite 501

6

Hempstead, New York 11550

7

BY: IRA FOGELGAREN, ESQ.

8

9

DONNA NAPOLITANO, ESQ.

10

Deputy Bureau Chief

11

Attorney for Defendants County of Nassau,

12

Nassau County Police Department and Police

13

Officer James Vara

14

Nassau County Attorney

15

One West Street

16

Mineola, New York 11501

17

18

LAW OFFICES OF LAURENCE JEFFREY WEINGARD, ESQ.

19

Attorney for Defendant Police Officer Craig

20

Buonora

21

250 West 57th Street, Suite 401

22

New York, New York 10107

23

BY: LAURENCE JEFFREY WEINGARD, ESQ.

24

25

1
2 IT IS HEREBY STIPULATED AND
3 AGREED by and between the attorneys for
4 the respective parties herein, that the
5 filing, sealing and certification of the
6 within deposition be waived.

7 IT IS FURTHER STIPULATED AND
8 AGREED that all objections, except as to
9 the form of the question, shall be
10 reserved to the time of the trial.

11 IT IS FURTHER STIPULATED AND
12 AGREED that the within deposition may be
13 sworn to and signed before any officer
14 authorized to administer an oath with
15 the same force and effect as if signed
16 and sworn to before the Court.

1

2 ALEXANDER J. BARNYCH,

3

called as a witness, having been duly

4

sworn by a Notary Public, was examined

5

and testified as follows:

6

EXAMINATION BY

7

MR. FOGELGAREN:

8

Q. Please state your full name for
the record.

9

A. Alexander J. Barnych.

10

Q. What is your address?

11

A. 1490 Franklin Avenue, Mineola,
New York 11501.

12

Q. Good afternoon.

13

A. Good afternoon.

14

Q. My name is Ira Fogelgaren. I
represent the plaintiff, Darryl Coggins, in
this matter, and I am going to be asking you
about the facts and circumstances surrounding
this lawsuit.

15

If at any time you don't
understand my questions, please let me know,
and I will try to rephrase them as best I can.
Please keep your answers verbal. The reporter
can't take down nods of the head. And please

16

1

Barnych

2

wait for me to finish my question before you
start to answer. She can't take down both of
us speaking at the same time. If at any time
you need a break, just let me know, and I will
accommodate you, okay?

3

A. Very good.

4

Q. Are you employed?

5

A. Yes, I am.

6

Q. Where?

7

A. I work for David Lerner
Associates in Syosset, New York.

8

Q. In what capacity?

9

A. I'm an investment counselor.

10

Q. How long have you been working
for them?

11

A. Since October 1st of 2007.

12

Q. What did you do before that?

13

A. I was a police officer and
detective.

14

Q. For who?

15

A. Nassau County Police Department.

16

Q. From when to when?

17

A. May 31, 1985 through September
14, 2007.

1

Barnych

2

Q. When did you become a detective?

3

A. June of 1998.

4

MR. WEINGARD: Can I just get the year? You said May 31st. I didn't catch the year.

7

THE WITNESS: 1985.

8

MR. WEINGARD: Thank you.

9

Q. When you became a detective,

10 where were you first assigned?

11

A. I was assigned to the 8th Squad

12 in Levittown.

13

Q. Doing what?

14

A. General precinct detective

15

assignments.

16

Q. For how long were you with the

17

8th Squad?

18

A. Up until December of 2001.

19

Q. Where were you assigned to after December of '01?

21

A. The 3rd Squad detectives in Williston Park.

23

Q. What duties did you have at the 3rd Squad?

25

A. General precinct detective

1 Barnych

2 assignments.

3 Q. Prior to coming to this
4 deposition today, did you review any documents
5 to prepare for this deposition?

6 A. Yes, I did.

7 Q. What documents did you review?

8 A. The arrest paperwork, case
9 report.

10 Q. Anything else?

11 A. No.

12 Q. On October 9, 2004, were you
13 working as a police officer?

14 A. Yes, I was.

15 Q. Do you have any independent
16 recollection of the incident that occurred in
17 Floral Park at Jericho Turnpike and Holland
18 Avenue at that time?

19 A. My recollection will be of what
20 happened when I was -- when I arrived there.
21 That would be several hours after the initial
22 point of contact.

23 Q. On October 9, 2004, were you
24 working a tour?

25 A. Yes, I was.

1 Barnych

2 Q. From when to when?

3 A. 7:00 in the morning until 5 p.m.

4 in the afternoon.

5 Q. Did you have a particular
6 assignment that day?

7 A. I was assigned to the 3rd Squad.

8 My responsibilities were that of what they
9 call the squeal man.

10 Q. Can you tell me what the duties
11 of a squeal man was at that time?

12 A. Yes. From the hours of 1:30 in
13 the morning on that date through 11:30 in the
14 morning, I was responsible for any cases that
15 came into the 3rd Squad that were assigned to
16 the detective division that needed follow-up.

17 Q. When did you first learn of an
18 incident on October 9, 2004 that occurred in
19 Floral Park at Jericho Turnpike and Holland
20 Avenue?

21 A. About 8:10 in the morning.

22 Q. What did you learn?

23 A. I learned that there was a car
24 stop at that location, that the police had
25 recovered a weapon at that location, and they

1

Barnych

2

were requesting detectives to respond to
assist in the investigation.

4

Q. How did you learn that?

5

A. I was notified by the front desk.

6

7

Q. And you said you were notified by
the front desk. Do you know who would sit at
the front desk at that time?

9

A. Normally it would be the desk
officer and several other police officers that
are assigned to a variety of different
functions. I don't remember specifically who
made the phone call, though.

14

15

Q. After you were notified by the
desk officer, what did you do?

16

17

18

19

A. I secured a radio, the keys to a
departmental vehicle. I requested Detective
Occhino respond with me, and we proceeded to
the location where we were requested.

20

21

22

Q. Prior to leaving the 3rd Precinct
at that time, did you learn when the incident
occurred at Floral Park?

23

24

MS. NAPOLITANO: Objection to

form.

25

You can answer.

1 Barnych

2 MR. WEINGARD: I join.

3 A. I believe during the course of
4 the conversation I was told that it happened
5 earlier in the morning. But specifically as
6 what time, I don't remember.

7 Q. After you secured the radio and
8 the departmental vehicle, what did you do?

9 A. Myself and Detective Occhino
10 drove to a location on Jericho Turnpike and
11 Holland Avenue in Floral Park.

12 Q. Did you carry a memo book on that
13 day?

14 A. No.

15 Q. Did you fill out any notes or
16 forms when you first learned about this
17 incident?

18 MS. NAPOLITANO: Objection.

19 You can answer.

20 A. No.

21 Q. Do you recall what time you
22 arrived at the scene?

23 A. Somewhere around 8:30 in the
24 morning.

25 Q. What location did you bring your

1 Barnych

2 car to at that time?

3 A. Jericho Turnpike and Holland
4 Avenue.

5 Q. Did you get out of your vehicle
6 at that time?

7 A. Yes, I did.

8 Q. What did you observe when you got
9 out of your vehicle?

10 A. There was several police units on
11 the scene, both of Nassau County and Floral
12 Park Village. There was a black Mazda parked
13 on the westbound shoulder, which would be the
14 north side of Jericho Turnpike, probably about
15 50 to 60 feet west of Holland Avenue. At the
16 time the Crime Scene Unit was there, as well
17 as emergency services officers, in addition to
18 precinct and village police officers.

19 Q. Did you see any other individuals
20 other than police officers at that time?

21 MS. NAPOLITANO: Objection.

22 You can answer.

23 A. None that were remarkable, you
24 know. It was a Saturday morning, so there are
25 people out and about. It's a combination

1 Barnych

2 business/residential area.

3 Q. I am just asking what you
4 recollect.

5 Do you recollect anybody beside
6 police officers being there?

7 A. No.

8 Q. While you were in the vehicle
9 from when you left the precinct up until the
10 time you arrived at the scene, did you have
11 any conversations with Detective Occhino?

12 A. I'm sure I did, but I don't
13 specifically remember what we talked about.

14 Q. Prior to arriving at the scene,
15 did you give any instructions to Detective
16 Occhino as to what he was to do at the scene?

17 A. Nothing specific, no.

18 Q. When you got out of your vehicle,
19 where did you go?

20 A. The scene itself encompassed a
21 fairly large area, so I directed myself to go
22 over to where the suspect auto was. That's
23 where the bulk of the police officers were at
24 that point.

25 Q. Did Detective Occhino also get

1 Barnych

2 out of the car?

3 A. Yes, sir.

4 Q. Did he accompany you?

5 A. Yes.

6 Q. Did you arrive at the suspect
7 auto?

8 A. Yes.

9 Q. What did you observe there?

10 A. It was a black Mazda automobile.

11 I believe it was model 626. When I arrived
12 there, the passenger door was open. In the
13 curb to the right of the passenger door was a
14 loaded magazine for a semiautomatic pistol.

15 Let me see. There were several police
16 officers standing about. Emergency services
17 officers had been completing their search of a
18 storm drain that was in close proximity to the
19 car, and there was a Crime Scene Unit that was
20 working as well.

21 Q. The loaded magazine, where was it
22 in relation to that black Mazda vehicle?

23 A. It was in the gutter on the right
24 side of the car, what would be consistent with
25 just outside the passenger door.

1

Barnych

2

Q. Was it a two-door or four-door
car, do you know?

4

A. I don't remember.

5

Q. Did you inspect that magazine?

6

A. I observed it. I didn't pick it
up and handle it in any way.

8

9

Q. What did you observe about it at
that time?

10

11

12

13

A. It was black metal, and through
the peepholes in the side of the magazine you
could see that there were rounds contained in
it, as well as one round at the top.

14

15

Q. Could you tell what type of round
it was, what caliber it was?

16

A. Not immediately, no.

17

18

Q. While you were at the scene, did
you determine what caliber it was?

19

20

A. I believe we determined it to be
a 380 caliber.

21

22

Q. Do you know how that was
determined?

23

24

A. It's very possible, but I don't
remember who did it and why.

25

Q. After you got out of your

1 Barnych

2 vehicle, did you have any conversations with
3 any police officers at the scene?

4 A. Yes, I did.

5 Q. Who is the first police officer
6 you had a conversation with?

7 A. Police Officer Vara.

8 Q. Did you know Police Officer Vara
9 prior to that time?

10 A. Yes.

11 Q. How did you know him?

12 A. He's employed in the 3rd Precinct
13 or assigned to the 3rd Precinct.

14 Q. Had you worked on cases with him
15 previously?

16 A. I can't say specifically on
17 cases, but I was aware that he was assigned to
18 that precinct.

19 Q. What did you discuss with Police
20 Officer Vara at that time?

21 A. I asked Officer Vara to tell me
22 what had happened, then I asked him to show me
23 what his path was after he told me that at one
24 point there was a foot pursuit, and he guided
25 me through the path that he took in the foot

1

Barnych

2

pursuit.

3

Q. What did Officer Vara respond
when you asked him what happened?

5

6

7

8

9

10

A. In sum and substance, he gave me
a detailed synopsis of everything that he did
from the point that he first observed this
particular car up until the point that he had
a foot pursuit and ultimately lost the
subject.

11

12

Q. Did he mention anything about a
gun?

13

14

A. During the course of
conversation? Sure.

15

Q. What did he say?

16

17

18

19

20

21

22

23

24

25

A. That -- specifically when he was
in foot pursuit of the subject, the subject
went over a chain-link fence in the driveway
of a residence. At that point he had heard a
metal object hit the ground, although he was
not certain what the metal object was. Later
on he came to find out that it was, in fact, a
gun. And he then informed me that the gun
that was located in the driveway was in the
same proximity to where he had heard that

1

Barnych

2

metal object hit the ground earlier during his
foot pursuit.

4

Q. Did he say anything else to you
during that initial conversation?

6

A. During the initial conversation?

7

MR. FOGELGAREN: Yes.

8

A. Like I said before, it was a
synopsis of everything that he had done from
the car stop.

11

Q. Did you take any notes of what
was being said at the time?

13

A. I may have.

14

Q. How would you take the notes?

15

A. There's a -- just a regular
stenographer's pad that you would take with
you, and any of those notes are then included
in the case jacket.

19

Q. Did you ask Vara at that point to
show you the path that this incident took
place?

22

A. Yes.

23

Q. Prior to that time, had you
spoken to anybody else at the site other than
Vara?

1 Barnych

2 A. I spoke to Sergeant Gieshen.

3 MS. NAPOLITANO: Spell it.

4 THE WITNESS: J-I-E --

5 MS. NAPOLITANO: G.

6 THE WITNESS: Yes, G-I-E-S-H-E-N.

7 Don't hold me to that. That's the best

8 I can do.

9 Q. Who is Sergeant Gieshen?

10 A. He's a patrol supervisor assigned
11 to the 3rd Precinct.

12 Q. Do you know if he had arrived at
13 that scene before you?

14 A. I know he did, yes.

15 Q. What did you talk to him about?

16 A. I asked him what he knew of the
17 incident, because he was there prior to my
18 arrival. He indicated to me that the two
19 witnesses that were in that subject auto were
20 released earlier or prior to my arrival, and
21 that he was the day shift supervisor who
22 responded to the location, that he was not
23 there during the initial contact.

24 Q. Did he tell you when he arrived
25 at that location?

1

Barnych

2

A. If he did, I don't remember, but
it would have been after 6:30 in the morning.

4

Q. Did Officer Vara indicate to you
as to why the black Nissan vehicle was
stopped?

7

A. Sorry?

8

Q. Did Officer Vara indicate to you
why the black Nissan vehicle was stopped?

10

11

A. I believe it was a Mazda, not a
Nissan.

12

13

MR. FOGELGAREN: Nissan, I'm

sorry.

14

15

A. Initially he said he observed it
speeding on Jericho Turnpike.

16

17

Q. Did he tell you how fast the
vehicle was going?

18

19

A. I believe he said somewhere
between 50 and 55 miles per hour.

20

21

Q. Did he say anything else with
regard to the operation of the vehicle before
it was stopped?

23

A. No.

24

25

Q. Did you have any discussion with
him about investigating whether the driver was

1

Barnych

2

intoxicated?

3

A. Yes. He told me that as he

4

approached the vehicle, he detected the odor
5 of an alcoholic beverage on the driver's
breath, and he asked the driver to exit the
6 vehicle in order for Police Officer Vara to
7 conduct some standardized field sobriety
8 testing.

9

Q. Vara was operating the vehicle at
10 that time?

11

A. Vara was operating a marked
12 police vehicle at that time.

13

Q. Was he working with anybody at
14 that time?

15

MS. NAPOLITANO: Objection.

16

If you know.

17

A. I don't believe he was in a
18 two-man car. I believe it was a one-man car.

19

Q. Did Vara tell you about any field
20 sobriety tests he did at the location?

21

A. Yes, he did.

22

Q. What did he tell you about that?

23

A. He said that after he performed
24 his field sobriety test, that it indicated

25

1 Barnych

2 positive for alcohol involvement, and he was
3 going to attempt to place the individual into
4 custody for driving while under the influence.
5 And at that point the subject broke free and
6 fled eastbound along Jericho Turnpike, then
7 north on Holland Avenue and then turned west
8 into the driveway of a house approximately two
9 houses north of Jericho Turnpike, at which
10 point Police Officer Vara was in foot pursuit,
11 and then he heard the -- and observed the
12 defendant or the subject go over a
13 approximately 4-foot chain-link, metal gate.
14 Police Officer Vara did not follow him over
15 the gate.

16 At a point in time he doubled
17 back around to check on the occupants of the
18 car, because there was multiple occupants in
19 the car, and then he continued further west
20 to, I believe, Hinsdale Avenue in an attempt
21 to try and intercept the subject on the other
22 block.

23 Q. Did Police Officer Vara have a
24 police radio with him at the time you saw him
25 on October 9, 2004?

1

Barnych

2

A. I don't specifically recall

3

seeing one on his person, but it would be
normal for him to have one assigned to the car
that he can take as a portable radio.

4

Q. Did you ask Officer Vara if he
requested backup at any point in time?

5

A. I don't specifically recall
asking him if he had backup. He did indicate
to me that there were other officers
responding to his location.

6

Q. Did he say which officers were
responding?

7

A. No. He did let me know that
while he was conducting the sobriety test, he
observed a Floral Park Village officer, which
was, I want to say, about a hundred yards west
of his location facing eastbound.

8

Q. Did Officer Vara indicate if the
Floral Park Village police officer did
anything with respect to what was going on at
that time?

9

MS. NAPOLITANO: Objection.

10

You can answer.

11

A. At what time?

1

Barnych

2

Q. At the time he encountered this person.

4

A. The only thing Police Officer Vara told me is that he conducted the field sobriety test by himself. He was not in the company of any assisting officers directly at that point.

9

Q. Was there any type of procedure in place at that time for an officer to request backup when he was about to do a field sobriety test?

13

MS. NAPOLITANO: Objection.

14

You can answer.

15

MR. WEINGARD: I'll join in the objection.

17

A. I'm not certain that there was any specific departmental guideline or regulation that says you must have an assisting officer there to perform those tests, so I don't know whether or not he believed there to be so or not.

23

Q. Was there a practice at the Nassau County Police Department followed at that time with regard to requesting additional

1

Barnych

2

officers when a field sobriety test would be
done?

4

MS. NAPOLITANO: Objection.

5

You can answer.

6

MR. WEINGARD: Again, I join.

7

A. I believe that would be left up

8 to the discretion of the individual officer.

9

Q. The residence where the suspect
had turned into, how far was that from the
car?

12

MS. NAPOLITANO: Objection.

13

If you understand.

14

Q. The black Mazda.

15

MS. NAPOLITANO: Objection.

16

A. The black Mazda was parked, when
I got there, anywhere from 50 to 60 feet west
of the northwest intersection of Jericho
Turnpike and Holland Avenue. The driveway of
the house that was turned into, without a
measure, I would say was probably about
anywhere from 50 to 60 feet north of the
northwest corner of Jericho Turnpike and
Holland Avenue on the west side of Holland
Avenue.

25

1

Barnych

2

Q. Were there any members of the
Crime Scene Unit present at the location when
you first got there?

5

A. Yes, there was.

6

Q. Who was there?

7

A. Detective Michael Fannon.

8

Q. Did you see what he was doing
when you first got there?

10

11

A. I believe he was finishing up his
general scene photographs.

12

13

Q. Did there come a point in time
where you observed the gun at that location?

14

A. Yes.

15

Q. Where was that located?

16

17

A. I believe it was in the driveway.

18

My memory doesn't recall what the exact house
number was, but it was the driveway that
Police Officer Vara indicated that he had
followed the subject down. It was -- the gate
was probably about 20 feet west of the
driveway apron, maybe 25 feet west of the
driveway apron, and the gun was on the west
side of that gate, so more within the
contained property.

21

22

23

24

25

1 Barnych

2 Q. Where was the gun in relation to
3 the gate?

4 A. It was west of the gate.

5 Q. How far west, in feet?

6 A. I would say about 6 or 7 feet
7 west of it, if I can remember.

8 Q. What was it lying on?

9 A. Concrete, driveway.

10 Q. Do you recall how long the
11 driveway was?

12 A. Maybe in total to the point of
13 the garage, maybe about 65, 70 feet.

14 Q. How wide was it?

15 A. One car width.

16 Q. Were there any cars parked in the
17 driveway?

18 A. I believe there was a minivan in
19 the driveway.

20 Q. What did you observe about the
21 gun when you first saw it?

22 A. It was lying on the driveway.

23 Q. Do you recall what color it was?

24 A. Dark metal.

25 Q. Could you tell what type of a gun

1

Barnych

2

it was?

3

A. Semiautomatic pistol.

4

Q. Do you know what caliber?

5

A. Not readily available.

6

Q. Did you have a discussion about

7 the gun with anybody at the site?

8

A. Detective Fannon.

9

Q. Can you tell me what you
10 discussed with Detective Fannon?

11

A. Well, closer observation, he
12 recorded the dimensions of the gun relative to
13 a ruler. I was present when he took his
14 photographs of the gun. I believe he made it
15 safe by placing a nylon loop through it, and
16 then he secured it into a evidence box to be
17 brought to the police department crime lab for
18 ballistics testing and trace evidence.

19

Q. Were you informed as to who found
20 that gun at the scene?

21

MR. WEINGARD: Objection as to

22

form.

23

MS. NAPOLITANO: Objection.

24

You can answer.

25

A. No.

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Barnych

2

Q. Did you ask anybody who found the
gun?

4

A. No.

5

6

Q. Did you have an assumption as to
who found the gun?

7

8

MS. NAPOLITANO: Objection as to
form.

9

You can answer.

10

MR. WEINGARD: I join.

11

12

13

A. I just know a gun -- they told me
a gun was recovered. I don't remember
specifically who told me who found what.

14

15

16

Q. Did you have an assumption as to
whether a Nassau County police officer or a
Floral Park police officer found the gun?

17

18

MS. NAPOLITANO: Objection to
form.

19

MR. WEINGARD: Join in it.

20

A. Could you reask that, please?

21

22

23

24

Q. At the time you were at the site,
did you have an assumption as to whether a
Nassau County police officer or a Floral Park
police officer found the gun?

25

A. I didn't make an assumption at

1 Barnych

2 that point.

3 MS. NAPOLITANO: Objection as to
4 form.

5 You have to wait for me to
6 object.

7 Q. Did Officer Vara tell you while
8 he was at that scene that he had found the
9 gun?

10 A. No.

11 Q. Do you know if any other evidence
12 was found at that site?

13 A. Which site?

14 Q. At the area in the vicinity of
15 the driveway.

16 A. Which driveway, which house? If
17 you could be specific, it would help me.

18 Q. The house where the gun was
19 found.

20 A. No, there was no specific
21 evidence, other than the gun, found at that
22 house.

23 Q. Was a ring found in that area?

24 A. It was found in the rear yard of
25 the home behind the home on Holland Avenue.

1

Barnych

2

Q. Do you know who found that ring?

3

4

5

A. I don't recall who specifically saw it for the first time, but I do remember seeing it myself.

6

Q. Where did you see it?

7

A. It was in a vegetable garden.

8

9

Q. What do you recall about the appearance of that ring?

10

11

12

A. It was a rather large yellow metal ring with multiple clear white to white stones on it.

13

14

Q. Did you observe anything else in that area, in that general area?

15

MS. NAPOLITANO: Objection.

16

A. Vegetables, dirt.

17

18

Q. Anything else with regard to evidence of what happened in this incident?

19

20

21

22

23

24

25

A. For my benefit, let's at least stipulate that in my mind there are three separate and distinct scenes here, where the vehicle was found on Jericho Turnpike, where the gun is found on Holland Avenue and where the ring is found in the backyard of a house from Hinsdale. If you could be kind --

1

Barnych

2

MR. WEINGARD: What was that

3

street reference?

4

THE WITNESS: Hinsdale,

5

H-I-N-S-D-A-L-E.

6

7

A. If you could be a little more specific as to which location you are talking about, that would help me.

8

9 Q. Let's start with the area where
10 the ring was found, was there anything else
11 found in relation to this incident?

12 A. I don't recall anything else
13 being found.

14 Q. Where the gun was found, was
15 there anything else found?

16 A. No, as I stated before.

17 Q. And going back to the vehicle.

18 A. The vehicle was where we found
19 the loaded magazine for a gun that was not the
20 one that was found in the driveway.

21 Q. Was anything else looked at in
22 that vehicle in that black Mazda?

23 A. Yes.

24 Q. What was looked at?

25 A. The interior of the vehicle was

1

Barnych

2

observed. The trunk of the vehicle was
observed. There was a photograph that was
recovered from the dashboard of the vehicle
that depicted a male black who exactly matched
the picture of Darryl Coggins, and we believe
it was Darryl Coggins, because that was the
photo license that Police Officer Vara had
secured during the car stop. So yeah, that
was recovered as well.

11

12

Q. And you said that that ring
matched the ring in the photograph?

13

14

A. I never said that. Actually, let
me strike never. I haven't said that yet.

15

16

Q. Did you compare the ring that was
found at Hinsdale to the ring that was in the
photograph?

18

MS. NAPOLITANO: Objection.

19

20

A. We observed that the person in
the photograph was wearing a ring that exactly
matched the one that was recovered in the rear
yard in the vegetable garden.

23

24

Q. Had you seen Darryl Coggins'
driver's license at --

25

A. Yes, at that point I had.

1

Barnych

2

MS. NAPOLITANO: You have to let

3

him finish.

4

5

Q. Who showed you Darryl Coggins' driver's license?

6

A. Officer Vara.

7

8

Q. Did Officer Vara tell you how he got Darryl Coggins' driver's license?

9

A. I don't specifically recall.

10

11

12

Q. Did Officer Vara tell you he was the sole officer who was pursuing Mr. Coggins initially?

13

14

MS. NAPOLITANO: Objection as to form.

15

You can answer.

16

17

18

19

20

21

22

A. I believe he said that he initiated the foot pursuit and that he was alone up to the point that he lost contact with Mr. Coggins at the gate in the driveway, but at that point he was aware that there was an assisting officer coming up behind him from Jericho Turnpike.

23

Q. Did he indicate who that was?

24

A. It was Officer Buonora.

25

Q. Did he tell you this while you

1 Barnych

2 were at that location?

3 A. Which location?

4 Q. The location that you responded
5 to.

6 A. Jericho Turnpike and Hinsdale or
7 Holland Avenue?

8 Q. Let me ask you this way.

9 A. I want to be specific.

10 Q. Let me ask you this way. Where
11 were you when Officer Vara told you about
12 Officer Buonora approaching in his car?

13 MS. NAPOLITANO: Objection, not
14 what the witness said.

15 Q. What exactly did Officer Vara say
16 with regard to another officer approaching at
17 that time?

18 A. At the point that he was running
19 up the driveway toward the gate, he was aware
20 of the fact that there was an assisting
21 officer behind him but a ways back, probably
22 at the corner of Jericho and Holland.

23 MR. WEINGARD: I am going to
24 object, unless that's actually what Vara
25 said. Did Vara actually say that, or

1 Barnych

2 are you just assuming that it was back
3 there?

4 THE WITNESS: No. It's in sum
5 and substance.

6 MS. NAPOLITANO: I am going to
7 object. Again, Mr. Weingard, you will
8 have an opportunity to ask him
9 questions.

10 MR. WEINGARD: Will you let him
11 answer?

12 MS. NAPOLITANO: He did answer.

13 MR. WEINGARD: In sum and
14 substance.

15 Can we have the answer read back,
16 please.

17 (Record read.)

18 Q. At the time you mentioned the
19 assisting officer, was the officer inside or
20 outside of a car?

21 A. He mentioned that he was aware of
22 the fact that an officer had exited his car
23 and was now coming up behind him to assist
24 him.

25 Q. Did he indicate how far behind

1 Barnych

2 him the other officer was?

3 A. I don't have a specific
4 recollection of that.

5 Q. And that officer was Officer
6 Buonora?

7 A. Yes, sir.

8 Q. And he told you this on October
9, 2004 at that location?

10 MS. NAPOLITANO: Objection to
11 form.

12 You can answer.

13 A. "He" meaning?

14 Q. "He" meaning Officer Vara.

15 A. Yes.

16 Q. Do you know if that conversation
17 occurred by the vehicle, in the driveway or at
18 some other location?

19 A. The conversation between Vara and
20 myself?

21 Q. With regard to the other
22 assisting officer, yes.

23 A. It was the driveway on Holland
24 Avenue.

25 Q. Was Officer Buonora present in

1

Barnych

2

that location at that time?

3

MR. WEINGARD: Objection as to

4

form. How would he know if he was
present? Except perhaps he might have
been told.

7

MR. FOGELGAREN: Okay. I will

8

rephrase it.

9

Q. Did you see Officer Buonora at
that location at that time?

11

A. No, I did not.

12

Q. On October 9, 2004, did you see
Police Officer Buonora at any time that day?

14

A. No.

15

Q. Did Officer Vara mention anybody
else who assisted him at that location other
than the officer who was running up the
driveway toward the gate?

19

A. He didn't mention any specific
other officers, but it was apparent that there
were other police officers there.

22

Q. Did you have any conversations
with Detective Occhino while you were at the
site on October 9, 2004?

25

MS. NAPOLITANO: Objection to

1 Barnych

2 form.

3 You can answer.

4 A. I'm sure I did.

5 Q. Do you recall any?

6 A. Not specifically. It was just
7 back and forth, you know. We would have been
8 commenting on what each of us observed, what
9 he may have found out from the people he spoke
10 to versus who I spoke to, develop a strategy
11 for finding the subjects or witnesses.

12 Q. Do you know how much time you
13 spent at that location?

14 A. All total, I want to say probably
15 about two hours.

16 Q. Do you recall any other
17 conversations you had with any other police
18 officers at that location other than what
19 you've told us up to now?

20 A. Other than Detective Fannon, no.
21 I believe I spoke to one of the emergency
22 services officers who told me that they had
23 checked some rooftops and mailboxes, and they
24 were negative for recovery of any additional
25 weapons, and also the storm drain on the

1 Barnych

2 corner that they had finished searching.

3 Q. Did they find anything at that
4 storm drain?

5 A. No.

6 Q. Did you speak to any civilians at
7 that location?

8 A. No.

9 Q. Did you speak to anybody else in
10 the Nassau County Police Department through
11 police radio while you were at that location?

12 A. I don't remember having any radio
13 contact, no.

14 Q. Do you know if any member of the
15 police department radioed any information
16 about Darryl Coggins to other members of the
17 police department from that location?

18 MS. NAPOLITANO: Objection.

19 MR. WEINGARD: Objection.

20 A. I have no knowledge of that.

21 Q. Did you give any instructions to
22 any police officers at that location prior to
23 leaving?

24 A. Yes.

25 Q. What were those directions?

1

Barnych

2

A. I directed that the vehicle in

3

question be impounded, and I informed Police
Officer Vara that it was his responsibility to
call in a completed case report at the
conclusion of his involvement.

4

Q. What is a completed case report?

5

A. Well, every police incident that
would fit the criteria for it being issued a
case report, the police officer that makes the
initial contact with data processing, if you
will, calls in what they call a preliminary
case report in order to get a sequence number
that allows assisting units, support units,
like crime scene, canine, emergency services,
that's how they track their involvement.

6

So what will happen is the
officer calls data processing. He secures a
preliminary case report, and there's minor
information that has to go in there or very,
very limited amount. At the point that their
involvement is done, they're obligated to call
data processing, fill in the details that
would normally be contained in that report
with regard to known subjects, vehicles,

7

1

Barnych

2

police action, any brief narrative of what had
transpired.

4

5

Q. Do you know if any evidence was
inventoried at the site?

6

A. Yes.

7

Q. What evidence was inventoried?

8

A. The loaded magazine that was
recovered from the car or the proximity of the
car, the gun that was found in the driveway,
the yellow metal ring that was found in the
vegetable garden, along with a men's wallet
and some other personal papers contained
therein, a few other items. They would have
been itemized on a evidence invoice. It's a
Form 106.

17

MR. FOGELGAREN: Mark this as

18

Barnych 1.

19

(Barnych Exhibit 1, Property

20

Bureau Invoice, marked for
identification.)

22

23

24

25

Q. I am going to show you what has
been marked as Exhibit Barnych 1 today's date,
and I am going to ask if you can identify that
form?

1 Barnych

2 A. This is a photocopy of police
3 department form PDCN 106. It bears the case
4 report number, the detective division number,
5 voucher number for property that's identified
6 in the body of it. It bears my signature,
7 along with an itemized list of items that were
8 recovered and where they were recovered.

9 Q. On this particular list, does
10 that include the gun that is recovered --

11 A. No.

12 Q. -- at the site?

13 MS. NAPOLITANO: Let him finish.

14 A. No, it does not.

15 Q. Was there a separate form made
16 out for the gun that is recovered?

17 A. Yes, sir.

18 Q. Would it be the same type of
19 form?

20 A. It should be.

21 Q. On October 9, 2004, did you see
22 any forms that were filled out by the Floral
23 Park Police Department?

24 A. No, I didn't.

25 Q. Subsequent to October 9, 2004,

1

Barnych

2

did you ever see any forms that were filled
out by the Floral Park Police Department with
regard to what occurred on October 9, 2004 at
the location?

6

A. No, sir.

7

Q. I will show you what has been
previously marked as Occhino 1 (handing). I
am going to ask you if you can identify, start
with the top page.

11

A. This is a Nassau County Police
Department arrest report dated 10/9 of 2004.
The defendant identified as Darryl Coggins,
and that's page 1. And there's information on
here on how the original complaint was
received, who the booking officers were,
description of the subject with regards to
tattoos, any prior arrests he may have had.
That's on page 1.

19

Q. Was there an arresting officer
designated?

22

A. Yes.

23

Q. Who was that?

24

A. That would be me.

25

Q. How were you designated the

1 Barnych

2 arresting officer?

3 A. In the lower portion of the
4 sheet, it's in the arrest data section, it
5 says "booked by." There is a number 6356 with
6 the first five letters of my last name, a
7 comma and then the numbers 7224 followed by
8 the first five letters of Detective Occhino's
9 name.

10 MR. FOGELGAREN: Take a
11 five-minute break.

12 MS. NAPOLITANO: Sure.

13 (Recess taken at 2:45 p.m.)

14 (Examination resumed at 2:51.)

15 (Barnych Exhibit 2, Floral Park
16 Police Department document, marked for
17 identification.)

18 Q. I will show you what has been
19 marked as Barnych 2. I ask you to take a look
20 at it. It's a one-page document. It says
21 Floral Park Police Department on top.

22 A. You've done a good job of
23 identifying it. I've never seen this before,
24 so I don't know what it is.

25 Q. You've never seen this document

1 Barnych

2 before today?

3 A. No.

4 MR. WEINGARD: But it is marked
5 as 2?

6 MR. FOGELGAREN: Barnych 2.

7 Q. After you left the area in Floral
8 Park on October 9, 2004, where did you go
9 after that?

10 A. Myself and Detective Occhino went
11 to, I believe it was, Woods Avenue in
12 Roosevelt.

13 Q. What was your purpose of going
14 there at that time?

15 A. We were looking to see if we
16 could locate Mr. Coggins.

17 Q. Why did you go to that location?

18 A. Because that was his known
19 address, as depicted on his driver's license.

20 Q. Did you meet anybody at that
21 location?

22 A. There was nobody there.

23 Q. Did you speak to anybody else in
24 that area?

25 A. I don't remember.

1 Barnych

2 Q. Where did you go after that?

3 A. We then went to a location in
4 Garden City Park.

5 Q. What was your purpose in going
6 there?

7 A. That was the address that we
8 believed was where we would find Ms. Jovan
9 Bates, who was the female passenger in the
10 earlier-discussed black Mazda.

11 MR. WEINGARD: Can you spell that
12 for us, please.

13 THE WITNESS: B-A-T-E-S, first
14 name J-O-V-A-N.

15 Q. What was your reason for seeing
16 her at that time?

17 A. To interview her to find out if
18 she can give us any insight as to where we
19 might be able to find Mr. Coggins and to also
20 find out what, if anything, she could provide,
21 as far as details from what had happened
22 earlier in the morning.

23 Q. Did you speak to her at that
24 location?

25 A. Yes, I did.

1 Barnych

2 Q. Was anybody with you at that
3 time?

4 A. Detective Occhino.

5 Q. Can you tell me about the
6 conversation you had with her at that time?

7 A. She did not give us any
8 indication as to where we could find
9 Mr. Coggins. She was reluctant to give us any
10 information initially. We did leave her with
11 the caveat that if she did hear from him, we
12 would appreciate it if she called us, and if
13 she could convince him to call us as well.

14 Q. Did you ask her about what she
15 observed at the time that Mr. Coggins and
16 Officer Vara were together?

17 A. No.

18 Q. Was there any reason that you
19 didn't ask about what she observed at that
20 time?

21 A. I was more focused on trying to
22 find Mr. Coggins at that point, and I really
23 didn't believe that she could have added any
24 details that altered what I already known had
25 happened earlier.

1 Barnych

2 Q. Did you speak to anybody else who
3 was a passenger in that vehicle other than
4 Ms. Bates?

5 A. I believe we tried to find
6 Mr. Simmons, but I'm not certain whether or
7 not we actually located him or not.

8 Q. After you spoke to Ms. Bates,
9 what did you do?

10 A. We then went to where Mr. Simmons
11 was known or believed to have lived.

12 MR. WEINGARD: Can we get a first
13 name, please?

14 THE WITNESS: Aaron I believe his
15 first name was.

16 Q. Did you meet Mr. Simmons at that
17 location?

18 A. No.

19 Q. Did you speak to anybody at that
20 location?

21 A. I don't believe we found anybody
22 there, no.

23 Q. Where did you go after that?

24 A. I believe Detective Occhino and I
25 grabbed either a cup of coffee or a bite to

1 Barnych

2 eat, and then ultimately we ended up back at
3 the 3rd Precinct.

4 Q. What did you do when you got back
5 to the 3rd Precinct?

6 A. Went back up to the 3rd Squad,
7 checked the computer system to see what other
8 cases I may have been assigned, and then I
9 worked at my computer to open up this
10 particular case and add my detective's
11 narrative entries into it.

12 Q. What detective narrative entries
13 did you enter? And you can refer to Occhino 1
14 to point them out, please.

15 A. Well, this particular packet of
16 information is comprised of an arrest report,
17 a crime report from this case. There's a
18 document in here that's not at all applicable
19 to anything that we're discussing here. It's
20 part of a case report from approximately four
21 years later. There's an additional copy of
22 the crime report, and there's actually two
23 copies of the crime report attached to this,
24 but there is no case report here.

25 Q. What information is contained on

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Barnych

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the case report?

3

4

5

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A. Case report is the -- again, the initial -- the date and time, place of occurrence, the participants who were involved, a narrative written by the police officer called preliminary narrative, description of vehicles and what the disposition of those vehicles would be, whether they were released, left legally parked, impounded, et cetera. That is the -- that is the initial police reporting system. That document then gets electronically assigned to the 3rd Squad, in this particular case it would. And then at that point I would add my narrative, which is informally known as a 262, but on that case report it's listed as a detective's narrative, and then it would detail my involvement in the case itself.

Q. On page 3 of Occhino 1 there is a narrative. It goes on to page 4.

A. Correct.

Q. You see that?

A. Yes, I do.

Q. Do you know who prepared that

1 Barnych

2 narrative?

3 A. Well, the first large paragraph
4 in here, if my recollection is correct, is a
5 transcription of what Police Officer Vara
6 would have put in the initial police narrative
7 in his case report, and the second paragraph,
8 which begins "On Saturday, 10/9/2004," that
9 would have been a narrative that was entered
10 by myself. But this is on the arrest report,
11 which is part of the arrest package, not
12 necessarily the case report.

13 Q. Would Officer Vara add anything
14 on to the case report?

15 A. Yes.

16 Q. What would he have entered?

17 A. Initially -- the date and time of
18 occurrence, location of the occurrence,
19 probably the license, registration of the
20 vehicle that was stopped, a description of the
21 vehicle by year, make and model and color.
22 There should be a listing of any person or
23 persons that were involved in the case, either
24 as police officers or civilians, with their
25 respective name, date of birth, Social

1

Barnych

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Security number, address. And as I stated
before, his narrative of what had transpired
from point of initial contact to point of
calling in the case report.

3

Q. In the narrative on the arrest
report in Occhino 1, the paragraph that you
said Officer Vara prepared, how did he do
that; did he orally call it into somebody, did
he write it down, type it up?

4

MS. NAPOLITANO: Objection.

5

If you know.

6

MR. WEINGARD: I join.

7

MR. FOGELGAREN: If you know.

8

A. In the normal course of police
operations, the police officer is required to
call the data processing bureau and update
them as to the complete details of the case as
they know them in order for the case to be
properly assigned up to the squad or kept at
the uniform level. To do that he would have
had to call the data processing bureau and
dictate this information to a multikeyboard
operator, who would then type it into the
computer narrative.

1 Barnych

2 Q. After Officer Vara submitted the
3 information that led to this paragraph, did
4 you review this paragraph?

5 A. Yes.

6 Q. Do you know when you reviewed it?

7 A. When I initially opened up the
8 case report on the computer.

9 Q. After reviewing it, did you speak
10 to Officer Vara?

11 A. No. You mean that day?

12 MR. FOGELGAREN: That day, yes.

13 A. No.

14 Q. Did you have any contact with
15 Mr. Coggins on October 9, 2004?

16 A. Yes, I did.

17 Q. When did you first have contact
18 with Mr. Coggins?

19 A. Somewhere just before 4 p.m. I
20 was contacted by the front desk, and they
21 indicated to me that Mr. Coggins was present
22 in the lobby of the 3rd Precinct, along with
23 an attorney. And I responded downstairs,
24 introduced myself to Mr. Coggins and his
25 attorney.

1 Barnych

2 Q. Who was his attorney?

3 A. I don't remember. It was an
4 older, white gentleman at the time. I believe
5 I kept his card in the case jacket, but I
6 don't remember his name.

7 Q. Did you have any conversations
8 with Mr. Coggins at that time?

9 A. My conversation was primarily
10 with the attorney, but I don't remember having
11 a specific conversation with Darryl Coggins.

12 Q. Do you recall what the
13 conversation with the attorney was at that
14 time?

15 A. The attorney had indicated to me
16 that he believed that we were looking for
17 Mr. Coggins relating to a DWI incident that
18 had happened earlier in the morning. I
19 commented to the attorney that it would be
20 unlikely that we were looking for him for a
21 DWI this many hours later, and I informed him
22 that the true nature of the charges would be
23 related to possession of a weapon,
24 specifically a loaded firearm and defaced
25 firearm.

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Barnych

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At that point the attorney

3

commented to me that he was unaware of that
situation, and he requested that I not take
any statements from Mr. Coggins, as I told him
that it was our intention to arrest
Mr. Coggins and process him on those charges.

7

8

Q. After that conversation ended,

9

what did you do?

10

11

12

13

A. I brought Mr. Coggins upstairs to
the 3rd Squad, placed him in the arrest room,
got myself organized and then proceeded to
process the arrest.

14

15

16

Q. What did you do with regard to
processing the arrest; what did you do
exactly?

17

18

19

20

21

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23

24

25

A. Specifically I opened up a
computer program, which was the Swift Justice
Arrest processing program. I filled in the
data on a screen-by-screen basis that was
applicable, prepared the crime report, the
arrest report, the two district court
informations. I also prepared the police
department Form 79, which is the physical
condition questionnaire of the defendant.

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Barnych

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What I had observed about Mr. Coggins, that he
had some scrapes on his forearm, I had to make
note that these scrapes were present. I asked
him how he received those scrapes, and he
indicated to me during the foot pursuit by the
police, he cut himself when he went over the
fence. I placed that comment in the Form 79
for the desk officer to review.

10

11

Q. Do you know if anybody inspected
Mr. Coggins for any tattoos?

12

A. I did.

13

Q. Did you note any tattoos?

14

15

A. Yes. On the arrest report the
description of his tattoos is in there. It
would be on page 1 of Occhino 1. In the first
body of information it says, "SMT/clothing,"
SMT being an abbreviation for scars, marks or
tattoos, and it indicated the word Tamel,
T-A-M-E-L, on his right forearm, and it says
"Thou shall love thy father" on his back.
Said he was wearing a white T-shirt, blue
jeans and black sneakers.

24

Q. Going to page 7 of Occhino 1.

25

A. By 7 do you mean the stamped page

1

Barnych

2

at the bottom?

3

MR. FOGELGAREN: Yes, 000007 of

4

Occhino 1.

5

Q. Do you see that page?

6

A. Yes, I do.

7

Q. What is that; what form is that?

8

A. This is the crime report, also known as PDCN Form 85 ASJ, which stands for Swift Justice, and then it bears the case report number, and I believe this would be the first page of a crime report.

13

14

Q. There is a portion marked "testimonials."

15

A. Correct.

16

Q. Who filled in that section?

17

A. I did.

18

19

Q. What information was supposed to be placed in that section?

20

21

22

23

A. Testimonials are the elements that a particular witness, be it civilian or police, would be able to articulate or testify to.

24

25

Q. The portion James Vara, where it says "no statement," it says, "Recovered

1

Barnych

2

loaded handgun." Do you see that, on the
3 second line?

4

A. Among other things, okay, yes.

5

6

Q. Did you put that information into
that section?

7

A. I typed it in, yes.

8

9

Q. Did you learn that Officer Vara
had recovered the loaded handgun at the site?

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

A. It was my belief that he was
instrumental in the recovery of the gun in one
level or another. The semantics of who
specifically recovers something, in my
opinion, is open for debate, and we can have a
discussion on that. But with specific regards
to this particular entry, yes, I made it,
because I believe that since this entire case
was initiated by him and he was ultimately
responsible for the car stop and the ensuing
foot pursuit, that there was a level of
involvement in the recovery, maybe not a
textbook definition of such.

Q. Then there is an arrest narrative
in the bottom of the page that goes on to the
next page.

1 Barnych

2 A. 7 on to 8?

3 MR. FOGELGAREN: Yes.

4 A. Yep.

5 Q. Again, that first paragraph, was
6 that prepared by Officer Vara?

7 A. The bulk of it was, yes.

8 Q. Was there any part of that first
9 paragraph that was not prepared by Officer
10 Vara?

11 A. The second paragraph where again
12 it begins "On Saturday, 10/9/2004."

13 Q. What I was asking was about the
14 paragraph prior to that, the first paragraph.

15 A. This is a transfer of the
16 information that Police Officer Vara had
17 placed in the case report and transferred over
18 to the arrest report in order to give the
19 court a synopsis of what specific incident
20 happened and what the elements of that are
21 that would rise to the level of criminal
22 activity.

23 Q. Other than what's contained in
24 Occhino 1, did you do any other investigation
25 with regard to the incident on October 9, 2004

1

Barnych

2

involving Darryl Coggins in Floral Park?

3

4

A. Other than what's already been
talked about?

5

MR. FOGELGAREN: Yes.

6

A. No.

7

8

9

Q. Did you have any discussions with
any assistant district attorneys about the
case?

10

A. Yes.

11

12

13

Q. When was the first time you
discussed the case with an assistant district
attorney?

14

A. I'm sorry. When?

15

Q. When.

16

A. I believe it was March of 2005.

17

18

Q. Was this after Mr. Coggins' case
was going to be presented to a grand jury?

19

20

MS. NAPOLITANO: Objection to

form.

21

A. No. It was just prior to that.

22

23

Q. Which assistant district attorney
did you talk to?

24

25

A. I believe her name was Mindy
Plotkin.

1 Barnych

2 Q. Where did you talk to her?

3 A. At the district attorney's
4 office.

5 Q. What was the purpose of talking
6 to her at that time?

7 A. I was subpoenaed as the carrying
8 detective. It was her intention to present
9 the evidence to the grand jury, and as such,
10 you know, my role in the case.

11 Q. What discussions did you have
12 with her about your role in the case?

13 A. Specifically that I was the
14 carrying detective, and in sum and substance
15 the details that were already reported in the
16 case and the fact that the defendant had
17 voluntarily surrendered to me at the 3rd
18 Precinct, and I processed him from that point.

19 Q. What happened after that?

20 A. With respect to?

21 Q. Did you have any conversations
22 again with the district attorney, the
23 assistant district attorney, after that?

24 MS. NAPOLITANO: Objection.

25 You can answer.

1

Barnych

2

A. On that particular date or at any
time thereafter?

4

5

Q. Any time after that, any time
after that.

6

7

8

9

A. Yeah. There was subsequent --
there was a subsequent suppression hearing
that I had to respond to or I was subpoenaed
to.

10

11

Q. Did you appear before the grand
jury?

12

A. No, sir.

13

14

15

MR. WEINGARD: Do we have a date
for that suppression hearing or the date
of appearance?

16

17

18

19

20

21

22

23

24

25

THE WITNESS: I believe the grand
jury was St. Patrick's Day, so it was
what, 3/17 of 2005? I'm sure their
records will back that up. I want to
believe that the suppression hearing
that I was called to was somewhere
either, I want to say, September or
October of 2005, maybe six, seven months
later. I can't recall specifically, but
I'm sure there is a way to determine

1

Barnych

2

that.

3

Q. Do you recall which district

4

attorney, assistant district attorney, that

5

you met with at that time?

6

A. It was Mindy Plotkin.

7

Q. Do you recall the conversation

8

you had with her at that time?

9

A. Other than the fact that she

10

informed me that she was not going to put me

11

in to testify --

12

MR. WEINGARD: I am going to

13

object.

14

MR. FOGLGAREN: It's okay. You

15

can answer.

16

A. As I said, she was not going to

17

put me in to testify, but it was necessary to

18

be there, because I was the carrying

19

detective, and then we had a conversation

20

after the hearing. That was a conversation

21

that was initiated by me.

22

Q. What was that conversation about?

23

A. There was a Floral Park police

24

officer that had also been requested to appear

25

that day, I believe his name was Police

1

Barnych

2

Officer Wilson, who had informed me that he,
in fact, recovered, by his definition of
recovery, the weapon in the driveway on
Holland Avenue and that he had broadcast radio
notifications of that fact over his police
radio, and he wanted to clear up any
misinformation regarding who had, in fact,
recovered the gun.

10

11

12

13

14

15

At that point I brought him into
Ms. Plotkin's office. I informed her that
Police Officer Wilson wanted to give her
details on his involvement regarding recovery
of the gun, and at that point I left it in her
hands, and I went back to my squad.

16

17

MR. WEINGARD: I'm sorry. You
went back to?

18

19

THE WITNESS: I went back to the
3rd Squad.

20

21

22

Q. What was the significance of
Officer Wilson's statement to you at that
time?

23

MS. NAPOLITANO: Objection.

24

MR. WEINGARD: I join.

25

A. That was the first time that I

1 Barnych

2 became aware that somebody other than a Nassau
3 County police member had, in fact, recovered
4 the gun, in whatever definition you want to
5 give the word recovery. He seemed -- he
6 seemed pretty adamant over the fact that that
7 was important to him, and I felt it was
8 equally important to bring that to the
9 attention of Ms. Plotkin.

10 Q. Did you have any discussions with
11 Officer Vara after you had this conversation
12 with Officer Wilson?

13 A. I wouldn't say direct
14 conversations with him about -- you mean in
15 the assistant district attorney's office or at
16 any time thereafter?

17 MR. FOGELGAREN: Anywhere.

18 A. Well, we had discussed -- not at
19 length, but many weeks or a few weeks later,
20 when I was then summoned to the ADA's office
21 of Jim Clark, Officer Vara had contacted me at
22 the squad and wanted to know what it was all
23 about. So I had told him that apparently
24 there's a problem with the case, and they want
25 to get our input on what happened.

1 Barnych

2 Q. Did you say anything else to
3 Detective Vara at that time?

4 A. Police Officer Vara?

5 Q. Police Officer Vara, I'm sorry.

6 A. I don't recall any specific
7 conversation.

8 Q. Did he say anything to you, other
9 than what you said?

10 A. Other than what it was all about,
11 no.

12 Q. Was anybody else with you when
13 you had this conversation other than yourself
14 and Vara?

15 A. I can't tell you who was on his
16 side of the phone, but it was a phone
17 conversation. I was by myself.

18 Q. Did you meet ADA Clark?

19 A. Yes.

20 Q. Did you have a conversation with
21 ADA Clark?

22 A. Yes, I did.

23 Q. What did you discuss with ADA
24 Clark?

25 A. They asked me what my involvement

1

Barnych

2

was in this case, as the carrying detective.

3

I detailed to them, probably at the same level of detail that I've provided to you here today, what my involvement was, responded to whatever questions they asked me at that time, and that was pretty much it.

4

Q. Did you appear at a grand jury after that?

5

A. Yes, I did. Did I? I don't remember. Honest to God, I don't know. I probably did.

6

Q. Do you recall giving any testimony with regard to what ADA Clark elicited from you?

7

A. I don't recall. If you have grand jury minutes with my name on it, I'll acknowledge it. I've been to the grand jury a thousand times, if I've been there once, so it all runs together after a while.

8

MR. FOGELGAREN: I don't, and I am not trying to fool you.

9

Q. After speaking to ADA Clark about the matter, did you have any conversations with anybody from the district attorney's

1 Barnych

2 office?

3 A. After meeting with Jim Clark?

4 MR. FOGELGAREN: Yes.

5 A. Nobody specifically from the DA's
6 office, no.

7 Q. Did you have conversations with
8 anybody else about what occurred on October 9,
9 2004, after you met with ADA Clark?

10 A. Yes.

11 Q. Who was that?

12 A. Detectives Association members,
13 you know, my union reps, Internal Affairs
14 supervisors, an attorney provided to me by the
15 union, Detective Occhino, my wife. Nobody
16 else really.

17 Q. What conversations did you have
18 with Detective Occhino about the incident?

19 A. Just the fact that we were being
20 called to Internal Affairs over the incident,
21 and, you know, I was not completely thrilled
22 about it, but it was what it was, and I had to
23 go through that.

24 Q. Did you speak to Officer Vara
25 about the Internal Affairs investigation?

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Barnych

2

A. Not that I recall.

3

Q. Did you ever speak to Officer
Buonora about the Internal Affairs
investigation?

4

A. Not about the Internal Affairs

5 investigation, no.

6

Q. Did you ever have any
conversations with Officer Buonora about the
incident that occurred on October 9, 2004?

7

A. No.

8

Q. Did you ever have any
conversation with Officer Buonora about the
investigation that was going on about the
incident on October 9, 2004?

9

A. Not specifically about the
incident or the investigation, just -- he
routinely would be at the doors of the station
house. I would pass him on my way in, you
know, and said hello and exchanged
pleasantries, if you will, to whatever we
could.

10

Q. Had you ever worked with Officer
Buonora prior to October 9, 2004?

11

A. I can only recall one other

1 Barnych
2 instance where I had actually met Officer
3 Buonora prior to that. It was a -- I believe
4 it was a gas station robbery in New Hyde Park,
5 probably about six or seven months before
6 that.

7 MR. FOGELGAREN: Why don't we
8 mark this as Exhibit 3.

9 (Barnych Exhibit 3, Document
10 Bates-stamped Nassau County 000302
11 through 000305 with attached fax cover
12 page, marked for identification.)

13 Q. I am going to ask you to look at
14 what has been marked as Barnych 3 and ask if
15 you can identify the document, which is a
16 four-page document with the heading Police
17 Department County of Nassau, New York Internal
18 Correspondence dated December 1, 2005.

19 A. This is a photograph copy of my
20 statement to Internal Affairs of the Nassau
21 County Police Department.

22 Q. This document, is this all in
23 your handwriting?

24 A. Other than what has been printed
25 by a machine and items marked "copy," this

1

Barnych

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time stamp on it and there's some cross-outs
in here that I did not create, and there's
also a fax cover page attached to this.

5

Anything that's written by pen, including my
initials encircled, I would say is my
handwriting.

7

Q. The Bates stamp Nassau County
000302, that bears your initials?

10

A. On the bottom left-hand corner,
yes. Well, it's been partially obliterated,
but those are mine.

13

Q. And the handwriting on that page
is yours?

15

A. Correct.

16

Q. The next page, 000303, is the
same, your handwriting and your initials on
the bottom of the page?

19

A. Yes.

20

Q. The following page, 000304,
handwriting is yours and initials are yours?

22

A. Yes, sir.

23

Q. 000305, the handwriting is yours?

24

A. Up to and including where there's
a cross-out that says "D sergeant" something,

1 Barnych

2 which is obliterated, his shield number and
3 the letters "IAU," but other than that, it's
4 mine.

5 Q. And your signature appears on
6 this page?

7 A. Yes, sir.

8 Q. And your initials appear on the
9 bottom of the page as well; is that correct?

10 A. Yes, sir.

11 Q. Do you know where you wrote this
12 statement?

13 A. At Nassau County police
14 headquarters.

15 Q. Did you write this statement
16 after being interviewed by a member or members
17 of the Internal Affairs Unit?

18 A. Yes, sir.

19 Q. Do you know who interviewed you?

20 A. I believe it was Lieutenant Fiel
21 and Sergeant Duryea.

22 Q. Did they ask you anything with
23 regard to your knowledge, if any, if Officer
24 Buonora had been involved in the incident
25 involving Mr. Coggins on October 9, 2004?

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Barnych

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MR. WEINGARD: Objection as to

3

the form of the question.

4

A. They had asked me a number of

5

questions regarding my involvement, what I believed Police Officer Vara's involvement was, what the involvement was of Detective Fannon up to and including other officers and, in fact, Officer Buonora.

9

10 Q. What did you tell them about Officer Buonora?

12

MR. WEINGARD: Objection.

13

MS. NAPOLITANO: Objection.

14

A. There was no volunteered information on my part as to what Officer Buonora's role was in this initial investigation. I also told them that at no time did I instruct anybody to say they recovered a specific weapon. There was a discussion about chain of evidence and custody, things along those lines. But with specific regards to Buonora, no, there was no direct, I guess, involvement on my end.

24

Q. Were you asked anything by any members of the Internal Affairs Unit about

25

1 Barnych

2 what you knew about Detective Buonora's
3 involvement?

4 MR. WEINGARD: Objection as to
5 the form.

6 MS. NAPOLITANO: Objection to
7 form.

8 A. There were a lot of questions
9 asked that day. Specifically about Buonora, I
10 can't remember one from the other. If there's
11 a record of it, it will be in that record.

12 Q. Did you tell any members of the
13 Internal Affairs Unit about Buonora arriving
14 at that location where Officer Vara was
15 pursuing Mr. Coggins on October 9, 2004?

16 MR. WEINGARD: Objection as to
17 the form of the question.

18 MS. NAPOLITANO: Objection to the
19 form.

20 A. I will object to it too, because
21 it was just too long for me to remember. What
22 is it you are asking?

23 Q. What I'm asking is did you say
24 anything during your interview with the
25 Internal Affairs Unit about what you learned

1

Barnych

2

about Officer Buonora arriving at the location
when Officer Vara had started to pursue
Mr. Coggins?

5

6

MR. WEINGARD: Again, same
objection.

7

MS. NAPOLITANO: Objection.

8

9

10

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A. I'm not sure how they may have approached the subject or whether or not it was a specific question directly related to Buonora, and I don't even know if it was part of the Internal Affairs investigation, but it was my understanding that Buonora's involvement was limited to being at the driveway of that house for a period of time and observing that no other persons had entered that driveway. As far as any specifics, I don't remember any more from there.

Q. Is there anything contained in your statement on Barnych 3 regarding Buonora being present at that location on October 9, 2004?

MR. WEINGARD: Do you want to

reference page 3?

1

Barnych

2

A. Okay. On what would be my
written page 3 Bates-stamped number 000304 is
the only reference to Police Officer Buonora
in my letter to Internal Affairs, and it was
specifically addressing whether or not Buonora
was involved in the actual foot pursuit, as
far as that goes, but it didn't address any
other action or lack of action that Buonora
may or may not have taken.

10

11 Q. You testified earlier that after
12 you learned about this incident when you were
13 at the 3rd Precinct, that you obtained a
14 police radio.

15

A. Yeah.

16

Q. Did you have a police radio prior
17 to that time?

18

MS. NAPOLITANO: Objection.

19

MR. WEINGARD: Objection as to
20 form.

21

Q. On that day.

22

A. The squad room has a bank of
23 radios that are kept in the supervisor's
24 office, okay. Additionally, there is a police
25 radio that is out by the blotter where you

1 Barnych

2 would sign in and out of. You would normally
3 obtain a set of departmental vehicle keys and
4 a radio from the supervisor's office before
5 leaving the building to go out and cover a
6 scene or go out and interview people.

7 Q. Did you hear any police radio
8 transmissions regarding the incident on
9 October 9, 2004 at Floral Park prior to you
10 obtaining the police radio at the time you
11 were getting your car?

12 A. No, sir.

13 Q. After speaking to Internal
14 Affairs and preparing the statement marked as
15 Barnych 3, did you have any conversations with
16 anybody else at the Nassau County Police
17 Department with regard to the incident of
18 October 9, 2004 at Floral Park?

19 A. I'm sorry. Give me the time
20 parameters again.

21 Q. After you prepared the statement,
22 Barnych 3.

23 A. After I prepared this?

24 Q. Yes. Did you have any other
25 conversations with anybody at the Nassau

1 Barnych

2 County Police Department with regard to the
3 incident on October 9, 2004 in Floral Park
4 involving Mr. Coggins?

5 MR. WEINGARD: Ira, are we
6 limiting that to Internal Affairs or
7 anybody at all?

8 MR. FOGELGAREN: Anybody at all
9 in the Nassau County Police Department.

10 MS. NAPOLITANO: Can I just add?
11 Up from December 1, 2005 to today?

12 MR. FOGELGAREN: Yes.

13 MS. NAPOLITANO: You can answer.

14 MR. WEINGARD: I would object.
15 It's overbroad.

16 A. Detective Walsh from the
17 Detectives Association.

18 Q. What conversation did you have
19 with Detective Walsh?

20 MR. WEINGARD: Objection.

21 A. I was inquiring if he knew what
22 the status was of the Internal Affairs
23 investigation.

24 Q. Did you ever learn of any
25 findings of the Internal Affairs

1 Barnych

2 investigation?

3 A. No.

4 Q. And you retired when?

5 A. September 14, 2007.

6 Q. What was your reason for
7 retiring?

8 A. I got a better job.

9 MR. FOGELGAREN: I have no
10 further questions.

11 MR. WEINGARD: I will just be a
12 moment or two.

13 MS. NAPOLITANO: Are you holding
14 it open?

15 RQ MR. FOGELGAREN: Yes. I will
16 repeat my request for the complete
17 records of the Internal Affairs Unit.
18 And after reviewing that, if there are
19 other areas which require a further
20 deposition of this witness, I am
21 reserving my rights to that.

22 MR. WEINGARD: And I would join
23 in that application.

24 Off the record.

25 (Discussion off the record.)

1 Barnych

2 EXAMINATION BY

3 MR. WEINGARD:

4 Q. As a result of what occurred
5 here, did you sustain any disciplinary charges
6 whatsoever?

7 A. No.

8 Q. I assume you were not dealt with
9 either administratively or through formal
10 charges when you respond to that?

11 MS. NAPOLITANO: Objection as to
12 form.

13 MR. WEINGARD: You can answer it.

14 A. Up until the time I retired, I
15 was not provided with any list of any
16 departmental complaint or violation of any
17 rules or regulations.

18 MR. WEINGARD: One moment or two.

19 Q. I think when you gave your
20 initial testimony, you said that Officer Vara,
21 in essence, was chasing a person he now
22 believes to have been Coggins and that he saw
23 him jump a fence, and did you say he heard a
24 metal sound or did not hear a metal sound when
25 that occurred?

1

Barnych

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MS. NAPOLITANO: Objection to

3

form.

4

You can answer.

5

A. Officer Vara told me that he

6

heard a metal object hit the ground.

7

Q. Did he tell you that at the scene
that morning?

8

A. Yes.

9

Q. Because it does appear in his
report, but it does not appear in your
handwritten report, I don't believe.

10

Would you take a look at your
handwritten report, which I believe to be
Barnych 3. You might look at page 2. I'm
sorry, I apologize. It does appear.

11

So he told you that he heard a
metal sound hit the ground?

12

A. Yes.

13

MS. NAPOLITANO: Objection.

14

Q. Did he tell you he had seen what
it was?

15

A. At the time that he told me he
first heard a metal object hit the ground, he
told me that he was not sure what that metal

16

1

Barnych

2

object was. He then learned later that it was
the gun.

4

5

Q. From whom did he learn that, if
you know?

6

MS. NAPOLITANO: Objection.

7

A. You'd have to ask him.

8

Q. Did he mention a name to you?

9

A. No.

10

11

12

13

14

15

16

17

18

19

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21

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23

24

25

Q. Throughout the entire time that
you were at the scene, you said you never saw
Officer Buonora?

A. That's correct.

Q. Did his name come up in any
context whatsoever while you were there?

MS. NAPOLITANO: Objection to
form.

You can answer.

A. Yes.

Q. Can you tell me what it was,
please?

A. As I had testified earlier,
Officer Vara indicated that while he was
actively pursuing this subject, he was aware
of the fact that an assisting officer was

1

Barnych

2

coming in behind him. It was later determined
3 that that was Officer Buonora.

4

Q. Do you have any understanding as
5 to why Officer Buonora was no longer at the
6 scene when you arrived?

7

8

MS. NAPOLITANO: Objection to
form.

9

MR. WEINGARD: You can answer.

10

11

THE WITNESS: It's nice how you
say I can answer.

12

13

MR. WEINGARD: She'll tell you
to.

14

MS. NAPOLITANO: You can answer.

15

16

17

A. To my understanding, he was

released from the scene by the patrol

supervisor, Sergeant Gieshen.

18

19

20

Q. Do you know approximately what

time, based on your conversations with the

sergeant, Buonora was released?

21

MS. NAPOLITANO: Objection.

22

If you know.

23

A. No.

24

25

Q. Incidentally, I'm a little

confused. Perhaps you can clarify this for

1 Barnych

2 me.

3 I thought you were saying that
4 your crime scene investigator was putting some
5 strings or some materials through the gun at
6 the scene. Did you say that to us before?

7 A. No. I didn't say strings. What
8 normally would be done is a nylon -- almost --
9 what is commonly known as, let's say, a flex
10 cuff or a wire tie in the electrical business.
11 That's used to secure through the barrel and
12 the trigger, you know. That's what should
13 have been done to keep the gun from rocking
14 through the transporting box as well.

15 Q. Do you know whether or not that
16 gun was loaded at the time it was found?

17 A. It was, in fact, determined to be
18 loaded, but I believe it was made safe for
19 transport.

20 Q. Do you know where it was
21 transported to?

22 MS. NAPOLITANO: Objection; asked
23 and answered.

24 You can answer again.

25 A. Detective Fannon would be the

1 Barnych

2 best source on exactly where it was
3 transported to, but in the normal course of
4 operations, he would have brought it back to
5 the crime scene headquarters, prepared his
6 documentation on it and then forward it to
7 police headquarters to be tested at the
8 ballistics lab.

9 Q. So if you had two police
10 departments at the scene and your Detective
11 Fannon would have processed this gun at the
12 scene, would he have brought that to the
13 Floral Park Police Department?

14 MS. NAPOLITANO: Objection.

15 If you know.

16 A. No, sir. The 3rd Squad
17 detectives would be the overriding authority
18 at a scene within the Village of Floral Park
19 related to felony investigations. That is
20 the, I guess, what's provided for in the
21 charter. That's why we provide the services
22 that we do.

23 Q. Do you have any idea as to how
24 the Floral Park Police Department came into
25 possession of the gun and the magazine?

1

Barnych

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MS. NAPOLITANO: Objection.

3

4

Q. If you're not aware that they had, that's okay. You can tell me that.

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A. They were never in the strict legal definition of possession of it. That wouldn't be their purvey. They may have observed it within the territorial confines of their village. But regardless of whether they observed it or not, as long as Nassau County personnel were present, specifically our Crime Scene Unit, it would have been the responsibility of crime scene to take that evidence and bring it back to our -- because ultimately it's going to end up there anyway, whether we were involved or not. If Floral Park recovers a gun in a case unrelated to this, they have to turn it over to the Nassau County Police Department.

20

21

Q. All right. I think you were shown Barnych 2.

22

23

24

25

If you look down at the narrative on this, you will see that the weapon involved, at least purportedly involved, and a magazine were vouchered at the Floral Park

1 Barnych

2 Police Department. Do you have any
3 explanation for that?

4 MS. NAPOLITANO: Objection. I
5 don't know that that's what this
6 document says.

7 THE WITNESS: First of all, where
8 do you see voucher?

9 MR. WEINGARD: I don't see the
10 word voucher.

11 THE WITNESS: Where do you see a
12 voucher number that would indicate it
13 was vouchered?

14 MR. WEINGARD: I was about to ask
15 you.

16 Q. I see code numbers or numbers
17 next to the statement that a Police Officer
18 Wilson reports finding a 9 millimeter loaded
19 weapon at 6 Holland Avenue. Weapon is a Hi
20 point mdl C, serial number is ground off, and
21 then it says -- bear with me for a moment.

22 MS. NAPOLITANO: Where are you
23 reading?

24 THE WITNESS: It's down here
25 (indicating).

1 Barnych

2 MR. WEINGARD: Believe me, it's
3 there. I'm not making it up.

4 Q. And I think there is also a
5 reference to a clip, a 25 caliber clip.

6 A. Um-hum.

7 Q. Can you explain this document to
8 us, if you know? If you don't know, it's
9 okay.

10 MS. NAPOLITANO: Objection.

11 Q. But if you do know, are you
12 suggesting that that doesn't mean that it was
13 vouchered at the Floral Park Police
14 Department?

15 MS. NAPOLITANO: Objection to the
16 form of the question and to the
17 question.

18 You can answer.

19 A. All right. I am going to state
20 for the record that up until today, I have
21 never seen this form, despite working in the
22 3rd Squad for five years, okay. This appears
23 to be an internal document that's generated
24 solely by the Floral Park Police Department.

25 MR. WEINGARD: Yes. That's what

1 Barnych

2 we say.

3 A. And at that time, it would not
4 have been part of any investigation that I had
5 done, okay. This was not an event that was
6 initiated by the Floral Park Police Department
7 for me to do follow-up on. It was initiated
8 by Nassau County.

9 Furthermore, I can deduce from
10 what I see here, and it's fairly obvious, that
11 in the middle of it it itemizes the car
12 numbers that were involved, the ID numbers of
13 the officers from Floral Park, their names,
14 their particular role, the time that they were
15 dispatched and the time they arrived at that
16 particular scene. And in the body of the
17 narrative that you cited just a moment ago,
18 those particular numbers, I would believe with
19 a strong amount of certainty that these are
20 the time entries based on radio or memo book
21 entries that this officer prepared,
22 specifically 0443 would be 4:43 in the morning
23 and sequentially down through and including
24 9:25, as far as that goes. That's what that
25 is. At least that's my perception of what it

1 Barnych

2 is.

3 MR. WEINGARD: And we will accept
4 that for the moment.

5 Q. My question to you is this: Does
6 this suggest to you that Floral Park took
7 possession of either the gun or the magazine
8 at the crime scene?

9 A. No.

10 MS. NAPOLITANO: Objection.

11 MR. WEINGARD: That's all I need
12 to know.

13 Q. The reason I am asking is that is
14 if you look at Barnych Number 1, there is no
15 reference to a gun or a magazine.

16 A. That's correct.

17 Q. Can you explain why there would
18 be no reference to that on this particular
19 document?

20 A. Because the gun and magazine were
21 secured by Detective Fannon. He would have
22 prepared his individual Form 106 relative to
23 what he secured and transported, and that
24 document ultimately would make its way to the
25 3rd Squad and be incorporated as part of the

1 Barnych

2 case.

3 Q. Is that part of your case file,
4 if you remember?

5 A. I don't have my case file here.
6 I have no way of knowing.

7 MR. WEINGARD: Do we have such a
8 document? And this is for the attorney.

9 MS. NAPOLITANO: I don't know.
10 If it was turned over, we have it. If
11 it wasn't turned over, we don't have it.
12 I have no way of knowing with the amount
13 of documents we turned over.

14 RQ MR. WEINGARD: I understand,
15 Donna, and you must understand that I
16 was not involved in that aspect of
17 discovery.

18 So what I am calling for is the
19 production of any such document which
20 relates to the vouchering by the Nassau
21 County or Floral Park Police
22 Departments, if you can, as it relates
23 to Floral Park, but certainly with
24 regard to the Nassau County Police
25 Department and the vouchering of the gun

1 Barnych

2 and the magazine.

3 MS. NAPOLITANO: Okay. I am
4 going to ask you to reduce it to
5 writing. I will take it under
6 advisement. But I will tell you here
7 and now that I have absolutely no
8 control over Floral Park documents.

9 MR. WEINGARD: We can subpoena
10 them.

11 MS. NAPOLITANO: If, in fact,
12 there is a document PDCN 106, which
13 indicates that the gun and the clip were
14 vouchered by the Nassau County Police
15 Department, we will turn over that
16 document, if we have not already turned
17 it over.

18 MR. WEINGARD: Do you have such a
19 document?

20 MR. FOGELGAREN: I don't know,
21 and I would join in the request.

22 Off the record.

23 (Discussion off the record.)

24 Q. Incidentally, did you ever see
25 the photograph of the gun? Didn't you say a

1

Barnych

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photograph was taken at the scene of the gun
as it lay where it was being secured?

4

MS. NAPOLITANO: Objection.

5

Q. By your crime scene people.

6

MS. NAPOLITANO: I don't think
this witness testified to that.

7

Q. I have "Have you seen a photo of
a gun" in my margin, based on the fact that
you said there were photographs being taken of
the gun; am I correct?

8

A. Photographs were taken. I
haven't seen the original photographs after
they were developed and printed.

9

Q. Would they normally have come to
you so that they could be included within your
case file?

10

A. Only if I requested them.

11

Q. Otherwise, where would they be?

12

A. Crime Scene Unit would keep --
well, the photo unit would more than likely
keep the negatives for those films under
whatever crime scene division number was
assigned to that case.

13

Q. Would prints have been made of

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Barnych

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those negatives?

3

4

5

6

A. It's very likely. In many cases the district attorney's office requests those photographs, and they bypass the carrying detective.

7

8

9

10

RQ MR. WEINGARD: I am going to request any photographs of the gun, the car or anything else that was taken at the time of this event.

11

12

13

14

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16

MS. NAPOLITANO: I am going to

ask that you reduce it to writing, and I will take it under advisement.

I will tell you that contained within the IAU report are photocopies of those pictures.

17

18

MR. WEINGARD: Works for me. I mean, if you've got them, send them.

19

20

MS. NAPOLITANO: I am just saying it's contained in the IAU.

21

22

23

24

25

MR. WEINGARD: I've seen my share of 9 millimeters, so it's not that I have to have the clearest definition of the thing, but I do want to see what it is.

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Barnych

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Q. I'm sorry. I may have gotten
myself lost, but did you say you never saw the
photograph or photographs of that particular
weapon?

6

A. I never saw the initial printed

7 photographs of that weapon.

8

Q. Any photocopies of it?

9

A. I don't recall seeing any
10 photocopies of it.

11

Q. When you were on the scene, were
12 you able to determine that the serial number
13 had been eradicated from that gun?

14

A. I don't remember looking at the
15 gun that closely. That's definitely something
16 that Detective Fannon would have been more in
17 a position to answer, because he physically
18 handled the weapon. I did not.

19

Q. What's the reason for eradicating
20 serial numbers on a weapon?

21

MS. NAPOLITANO: Objection.

22

A. We don't have enough time to
23 answer that question.

24

Q. Why don't you give me your best
25 shot.

1

Barnych

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A. One of the reasons why someone would want to eradicate the serial number is to detect its ability to be traced to its original owner and possibly cover up the fact that the gun may or may not have been stolen on a prior date.

3

Q. Did you have any occasion whatsoever after the arrest of Mr. Coggins to conduct any further investigation related to the gun or the magazine for that matter in order to determine where it had originated and how it had been defaced?

4

A. Me personally?

5

MR. WEINGARD: Yes.

6

A. No.

7

Q. Who would have done that at Nassau police?

8

MS. NAPOLITANO: Objection.

9

If you know.

10

A. The gun itself, after Detective Fannon photographs it and sends it over to the crime lab, would have been examined by a firearms expert who would make notations of that, test the gun for operability, okay, and

11

1 Barnych

2 record his data there. So it would be within
3 the purview of the police department crime lab,
4 if you will, Forensic Evidence Bureau
5 specifically.

6 Q. Would it be within the purview of
7 the ballistics unit or the general crime lab?

8 MS. NAPOLITANO: Objection.

9 You can answer.

10 A. It's a document that will be
11 provided, but the Forensic Evidence Bureau,
12 which is the official name for the crime lab,
13 is comprised of several compartments.
14 Ballistics or, you know, in that respect would
15 be one of those compartments.

16 Q. When you went to see Jovan
17 Bates -- I think that's how you said it, Jovan
18 Bates?

19 A. I said Jovan, tomato tomato.

20 Q. When you spoke to the tomato --

21 A. I didn't speak to a tomato.

22 Q. Or a tomato.

23 When you spoke to Jovan Bates,
24 did you ask her anything or any questions
25 whatsoever related to the magazine that was

1

Barnych

2

found alongside the passenger door to the car?

3

A. I don't recall specifically having any conversation about that at this time. Is it possible that we did? I don't know.

7

Q. If you had had such a conversation, would you have taken that down on the notepad you were describing earlier?

10

A. Maybe, maybe not.

11

Q. If you did do that, that would

12 end up in your case file?

13

A. Whatever notes I would have taken would have been in the case file.

15

Q. And when you left as a detective, what happened to that case file, if you know?

17

A. I have no knowledge of what happened.

19

Q. What would normally happen when a detective retires to his case file?

21

A. Case files in and of themselves are property of the police department, County of Nassau. Whether or not they reduce them to microfilm or store them in a warehouse, I have no clue. I do know that they're kept in the

25

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Barnych

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building for a period of time after the case
3 is closed, whether the detective is retired or
4 active, but just because a detective retires
5 doesn't cause any specific action to be done
6 on that case. It's really a matter of where
7 is the space to store the case jacket.

8

9

Q. And at some point it's destroyed;
is that what I understand you to say?

10

11

A. I don't know about destroyed. I
would say archived is a better word.

12

13

RQ MR. WEINGARD: So again, I call
for the production of the case file.

14

MR. FOGELGAREN: I join.

15

16

17

MS. NAPOLITANO: I ask that it be
reduced to writing, and I will take it
under advisement.

18

19

20

MR. WEINGARD: Thank you,

Detective Barnych. I appreciate your
time.

21

22

MR. FOGELGAREN: I have a couple
of follow-ups.

23

FURTHER EXAMINATION

24

BY MR. FOGELGAREN:

25

Q. You said Sergeant Gieshen is it?

1

Barnych

2

A. Gieshen.

3

Q. That he released Officer Buonora
from the scene?

5

A. I said I believe he may have been
responsible for Officer Buonora being relieved
at the scene, okay.

8

Q. You said you later determined
that it was Officer Buonora who came after
Officer Vara started to follow the suspect.

11

A. Um-hum.

12

Q. When did you determine that it
was Officer Buonora?

14

A. While I was present at that
scene, somewhere within that two-hour time
frame.

17

MR. FOGELGAREN: Thank you. I
have no further questions.

19

MR. WEINGARD: We're done,
subject only to the fact that if there
are additional materials, we will be
back to you.

23

(Time noted: 4:00 p.m.)

24

25

101

1 Barnych

2 A C K N O W L E D G M E N T

3

4 STATE OF NEW YORK)
5 COUNTY OF) :ss

6

7 I, ALEXANDER J. BARNYCH, hereby
8 certify that I have read the transcript of my
9 testimony taken under oath in my deposition of
10 February 25, 2010; that the transcript is a
11 true, complete and correct record of my
12 testimony, and that the answers on the record
13 as given by me are true and correct.

14

15

16

17

ALEXANDER J. BARNYCH

18

19

20 Signed and subscribed to before
me, this day
21 of , 2010.

22

Notary Public, State of New York

23

24

25

102

1
2 -----I N D E X-----

3 WITNESS EXAMINATION BY PAGE
4 ALEXANDER J. BARNYCH MR. FOGELGAREN 4, 99
5 MR. WEINGARD 80

6
7 -----DOCUMENT REQUEST-----

8 PAGE 79 Complete records of Internal
9 Affairs Unit
10 91 Document relating to vouchering of
11 gun and magazine by Nassau County
12 or Floral Park Police Departments
13 94 Any photographs of gun, car or
14 anything else taken at time of
15 event
16 99 Case file

17 -----EXHIBITS-----

18 BARNYCH FOR I.D.
19 1 Property Bureau Invoice 41
20 2 Floral Park Police Department
21 document 44
22 3 Document Bates-stamped Nassau
23 County 000302 through 000305 with
24 attached fax cover page 70
25 (Counsel retained exhibits.)

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C E R T I F I C A T E

3 STATE OF NEW YORK)

) S S . :

5 COUNTY OF NASSAU)

7 I, JENNIFER FUCHS, a Notary

15 I further certify that I am not
16 related to any of the parties to this
17 action by blood or marriage; and that I
18 am in no way interested in the outcome
19 of this matter.

20 IN WITNESS WHEREOF, I have
21 hereunto set my hand this 7th day of
22 March, 2010.

Jennifer Fleck

JENNIFER FUCHS